



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 20, 1996

Mr. Roland Castaneda
General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR96-2182

Dear Mr. Castaneda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101975.

Dallas Area Rapid Transit ("DART") received a request for, among other things:

A copy of the "memorandum of the selection process" required by §5-509 of DART's Procurement Regulations to have been prepared by the Selection Panel for Architect-Engineer contracts during the preceding three years and which were administered at the procurement phase by Monica Witt, Kathleen Nugent, or James Battie as the contracts administrator.

You contend that one such memorandum is excepted from disclosure under section 552.104 of the Government Code. You have submitted a copy of the memorandum to this office for review.

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 (1990) at 4. Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. Open Records Decision Nos. 306 (1982); 184 (1978).

The memorandum you seek to withhold is dated July 22, 1996, and is related to "RFP/RFQ No. 96025124, General Engineering Consultant." We understand that DART has not yet awarded a contract to a general engineering consultant and that the competitive process is

"current and on-going." Furthermore, you have demonstrated that DART would suffer actual harm if required to release the memorandum at this point in the competitive bidding process. Under these circumstances, we conclude that DART may withhold the memorandum from disclosure under section 552.104.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 101975

Enclosures: Submitted documents

cc: Mr. Wayne L. Friesner
Attorney at Law
6908 Maple Creek Lane
Dallas, Texas 75252
(w/o enclosures)

¹As you have claimed that only the memorandum you submitted to this office is excepted from disclosure, we assume that you have released to the requestor all other information that is responsive to each category of his request.